IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 280 OF 2003.

1. Shri Dattaram Vithal Chari,
   r/o H. No. 81/C Xell,
   Bastora, Mapusa.
2. Smt. Alka Dattaram Chari,
   r/o H. No. 81/C Xell,
   Bastora, Mapusa. ... Petitioners.

Versus

1. The State of Goa through
   the Chief Secretary,
   Secretariat, Panaji.
2. The Dean of Goa Medical
   College & Hospital,
   Bambolim. ... Respondents.

Mr. Y.V. Nadkarni, Advocate appointed for the Petitioners.

Mr. P.A. Kamat, Additional Government Advocate for the Respondents.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 28th July 2003.

ORAL JUDGMENT (PER REBELLO, J.)

Rule. Respondents waive service. Heard forthwith.

2. Petitioner no. 1 is a teacher employed with the People's High School, Camurlim Village, Bardez Taluka. It is a Government aided school. The case of the petitioner no. 1 is that he is earning a salary of about Rs. 5,000/- per month. Petitioner no. 2 is the wife of petitioner no. 1. As the petitioner no. 2 complained of pain in the left breast, she was rushed for medical check-up to a nearest private hospital. On

17th January 2002, the petitioner no. 2 was examined and the lump found in the breast was suspected to be cancerous. Dr. D.V. Gaitonde, Surgeon attached to the hospital, performed an urgent surgical operation of Lumpectomy. The dislodged lump was sent for a Pathological test to a private Laboratory and the Pathological Report revealed that the said lump contained infiltrating duct carcinoma. On receipt of the Pathological Report, it is the case of the petitioner no. 1, that he took petitioner no. 2 to the Associate Professor of Surgery at the Goa Medical College for post operative treatment and for confirmation of the biopsy slide report prepared by the private Pathological Laboratory.

3. Petitioner no. 2 was admitted in the Goa Medical College and another slide report was done. Based on this report, it is the case of the petitioners, that it was opined that the case of the petitioner no. 2 was that of infiltrating duct carcinoma grade III, that is, cancer of third grade. Consequent thereto, petitioner no. 2 was advised to undergo surgical operation immediately for Mastectomy, which was fixed on 30th January 2002. It is the case of the petitioners that they were advised to purchase the required material for the said operation. The purchases made pursuant to the directions are annexed as Exhibit A5 colly. The

petitioner no. 2 underwent psychological trauma and being apprehensive sought a reference to consult an Oncologist at the Tata Memorial Hospital. It is the case of the petitioner no. 2 that though she made a request, the same was turned down. Requests made to the Junior Doctors also were turned down. The case of the petitioner no. 2 is that she managed to secure a reference letter from a Committee Member of the Goa Medical College to consult the Tata Memorial Hospital at Mumbai. Reliance is placed on the said letter. It is the case of the petitioner no. 2 that, on account of this, she could not obtain the NOC/Essentiality Certificate from the Goa Medical College and sought discharge on 29th January 2002 so as to consult Dr. S.H. Advani, Chief of Medical Oncology of Tata Memorial Hospital.

Dr. Advani, after conducting various tests, arrived at a conclusion that there was no necessity for Mastectomy and advised a different course of treatment. The Pathological Report, it is contended, also showed a difference, inasmuch as it was found that the petitioner no. 2 was suffering from Carcinoma Grade II and not Malignant Carcinoma Grade III. The case of the petitioner is that the Chemotherapy treatment is a costly one. He purchased the medicines by availing a loan and financial assistance from his friends and

well-wishers. The record would show that the first dose was administered at the Tata Memorial Hospital and the two subsequent doses were administered at the Manipal Goa Cancer & General Hospital. After the said doses of three cycles, the petitioner no. 2 was advised three further cycles, which the petitioner no. 2 underwent at the Goa Medical College and insofar as these three cycles are concerned, the amount has been reimbursed to the petitioners. Though the petitioners had sought various reliefs, at the hearing of this petition, on behalf of the petitioners, learned counsel, who was appointed by the Court to assist the petitioners, contends that the petitioners are restricting their relief only towards the cost of medicines purchased as per Exhibit A18 colly, which are bills dated 12th February, 5th and 26th March 2002, totalling to Rs. 71,820/-.

4. On the other hand, on behalf of the respondents, an affidavit has been filed by Dr. V.G. Dhume. Dr. Dhume has relied upon the Office Memorandum, dated 15th February 1994 as also the earlier Office Memorandum, dated 28th April 1992. It is contended that in terms of guideline no. 2 of Office Memorandum, dated 28th April 1992, no Government servant or dependant shall obtain medical treatment in private hospital from Goa and claim medical reimbursement unless

he/she is referred to the same by Authorised Medical Attendant from Goa Medical College. In the instant case, it is pointed out that petitioner no. 2 took treatment outside the State without due reference/authorisation by the Authorised Medical Attendant. The other averments deny certain allegations made in the petition. We do not propose to go into those issues as they are not required for determining the controversy that has arisen herein. At the highest, it can be said that there was an honest difference of medical opinion based on the Pathological Report of the Goa Medical College and the Pathological Report as conducted by the Tata Memorial Hospital.

On behalf of the petitioners, learned counsel points out that the Office Memorandum of 28th April 1992 is in respect of receiving refund of hospital bills of Government servants, who have received/obtained treatment in the private hospitals in Goa or in the States outside Goa. It is pointed out that considering the Office Memorandum itself, what would really be applicable will be the Medical Attendance Rules read alongwith the Office Memorandum.

5. We have been taken through various Rules, where Tata Memorial Hospital has been identified as one of the hospitals where a patient can be granted

specialized treatment for cancer. There is no dispute that Goa Medical College is not a specialized hospital for the purpose of cancer diagnosis and treatment, though it does have facilities for giving treatment and Surgeons are available, who, as per the records pointed out on behalf of the respondents, do carry out cancer operations. The question really in the instant case is whether the petitioners are entitled to reimbursement of the medical bills.

There is no dispute in the instant case that the petitioner no. 2 was admitted to the Goa Medical College. The petitioner no. 2 was to be operated at the Goa Medical College based on the Pathological Report and the opinion formed by Dr. Amonkar. Though the allegation made by the petitioner no. 2 that she had sought for a second opinion is denied, on the facts and circumstances, we will have to proceed on the basis of subsequent events that the petitioner no. 2 had sought a reference for a second opinion. The very fact that petitioner no. 2 sought a discharge and took an opinion from Tata Memorial Hospital by itself would be an indication that the petitioner no. 2, in these circumstances, wanted a second opinion before she underwent the operation as opined by the Goa Medical College. Secondly what we see from the record is that in respect of the three subsequent doses, the petitioner

no. 1 has been reimbursed the expenses of the treatment which was administered at the Goa Medical College. Considering these facts, in our opinion, merely because the first dose was given at the Tata Memorial Hospital and the subsequent doses were administered by the Manipal-Goa Cancer & General Hospital, would be immaterial. The Office Memorandum relied upon is not to reimburse hospital bills outside the State. In the instant case, the petitioner could have been referred to a specialized centre. Tata Memorial Hospital is a specialized centre for cancer treatment. The petitioner is not seeking reimbursement of costs incurred there. Petitioner had purchased the medicines in Goa from the pharmacy annexed to the Goa Medical College. Petitioner is seeking reimbursement of the costs of medicines only. We may also make it clear that a letter from a Member of the Hospital Advisory Board is of no consequence. The reference must be by the consulting Doctor as required under the Office Memorandum and, in the light of the peculiar facts of the instant case, we are of the opinion that the petitioner no. 1 would be entitled to reimbursement of a sum of Rs. 71,820/-, which are the three bills, for which the petitioner no. 2 was administered the drug on 12th February, 5th and 26th March 2002. The petitioner no. 1 is a teacher.

6. The respondents, on the petitioners submitting

the papers, to certify the said amounts/bills for payment within 4 weeks of receiving the papers from the petitioner no. 1. The School, within two weeks thereafter of receiving the certificate, to forward the same to the concerned Department and the said Department within 4 weeks thereafter to process and make the payment.

Rule made accordingly absolute. There shall be no order as to costs. We would like to place on record our appreciation for the services rendered by Advocate Y.V. Nadkarni to the Petitioners and to the Court.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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